

REDACTED DECISION -- 06-538 HP through 06-541 HP -- BY GEORGE V. PIPER, ALJ -- SUBMITTED for DECISION on JANUARY 08, 2007 -- ISSUED on JANUARY 18, 2007

SYNOPSIS

BROAD-BASED HEALTH CARE PROVIDER TAX -- BURDEN OF PROOF NOT MET -- Because W. Va. Code §11-27-23 requires that all persons subject to the so-called “broad-based” health care provider tax file an annual return with the State Tax Commissioner, Petitioner’s failure to do so mandates that the assessment be affirmed *in toto*.

FINAL DECISION

On September 15, 2006, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or the “Respondent”) issued a broad-based health care provider tax assessment against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 27 of the West Virginia Code. The assessment was for the year 2002, for tax of \$, interest, through September 15, 2006, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner as required by law.

Also, on September 15, 2006, the Commissioner (by the Division) issued a broad-based health care provider tax assessment against the Petitioner under the provisions of Chapter 11, Articles 10 and 27 of the West Virginia Code, for the year 2003, for tax of \$, interest, through September 15, 2006, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner as required by law.

Also, on September 15, 2006, the Commissioner (by the Division) issued a broad-based health care provider tax assessment against the Petitioner under the provisions of Chapter 11, Articles 10 and 27 of the West Virginia Code, for the year 2004, for tax of \$, interest, through September 15, 2006, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner as required by law.

Also, on September 15, 2006, the Commissioner (by the Division) issued a broad-based health care provider tax assessment against the Petitioner under the provisions of Chapter 11, Articles 10 and 27 of the West Virginia Code, for the year 2005, for tax of \$, interest, through September 15, 2006, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner as required by law.

Thereafter, by mail postmarked September 25, 2006, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, petitions for reassessment *See* W. Vs. Code § 11-10A-8(1)[2002], and 11-10A-9(a)-(b)[2005].

In due course the presiding administrative law judge determined that the matter would be decided on documents only, in lieu of the parties' appearing at an administrative hearing in person, because their appearances in person were not necessary (no material questions of fact).

FINDINGS OF FACT

1. Petitioner is a physician providing medical services in the states of Ohio and West Virginia.

2. During the audit years in question, Petitioner apparently paid its broad-based health care provider taxes on a quarterly basis, as evidenced by the faces of copies of cancelled checks which he submitted in support of his petition for reassessment.

3. In response Respondent's counsel noted that all four (4) of the assessments were estimated because Petitioner had failed to file the required annual returns for each of the tax years.

DISCUSSION

The only issue is whether the Petitioner has shown that the assessments are erroneous or otherwise invalid. W. Va. Code §11-27-23, states in part, "(a) Annual return-- Every person subject to a tax imposed by this article shall file an annual return with the tax commissioner. Returns made on the basis of a calendar year shall be filed on or before the thirty- first day of January following the close of the calendar year."

Subsection (a) also allows returns, made on the basis of a fiscal year, to be filed on the last day of the first month after the close of the fiscal year.

In any event there are no provisions which allow a taxpayer to avoid the filling of an annual return, notwithstanding the fact that he may have made estimated tax payments throughout the course of any calendar or fiscal year, and this conclusion is borne out by W. Va. Code § 11-27-24, which states that the balance of any tax due must be paid by the last day of the first month following the close of the taxpayer's tax year, which is clearly the annual return which Petitioner failed to file for each of the four (4) calendar years.

Because Petitioner did not comply with the requirements of W. Va. Code § 11-27-23 regarding the filing of an annual return, this tribunal has no recourse but to affirm the four (4) assessments *in toto*.

CONCLUSIONS OF LAW

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a Petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (Apr.20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to his contention that he owed no broad-based health care provider tax for the years in question.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the broad-based health care provider tax assessment issued against the Petitioner for the year 2002, for tax of \$, interest of, and additions to tax of \$, **totaling** \$, should be and is hereby **AFFIRMED** (less any tax payment made for that tax year).

Pursuant to the provision of W. Va. Code § 11-10-17 (a) [2002], **interest accrues** on this broad-based health care provider tax assessment until this liability is fully paid.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the broad-based health care provider tax assessment issued against the Petitioner for the year 2003, for tax \$, interest of \$, and additions to tax of \$, **totaling** \$, should be and is hereby **AFFIRMED** (less any tax payment made for that tax year).

Pursuant to the provision of W. Va. Code § 11-10-17 (a) [2002], **interest accrues** on this broad-based health care provider tax assessment until this liability is fully paid.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the broad-based health care provider tax assessment issued against the Petitioner for the year 2004, for the tax of \$, interest of \$, and additions to tax of \$, **totaling** \$, should be and is hereby **AFFIRMED** (less any tax payment made for that tax year).

Pursuant to provisions of W. Va. Code § 11-10-14(a) [2002], **interest accrues** on this broad based-health care provider tax assessment until this liability is fully paid.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the broad-based health care provider tax assessment issued against the Petitioner for the year 2005, for the tax of \$, interest of \$, and additions to tax of \$, **totaling** \$, should be and is hereby **AFFIRMED** (less any tax payment made for that tax year).

Pursuant to the provisions of W. Va. Code § 11-10-17 (a)[2002], **interest accrues** on this broad-based health care provider tax assessment until this liability is fully paid.